

Minutes of the Board of Adjustment meeting held on Monday, September 14, 2009, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Wendell Coombs, Chair  
Joyce McStotts, Vice-Chair  
Rosi Haidenthaller  
Connie Howard  
Chad Wilkinson, Community Development Planner  
Tim Tingey, Community & Economic Development Director  
G.L. Critchfield  
Citizens

Excused: Jonathan Russell

There was a staff review meeting held where the Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

#### APPROVAL OF MINUTES

Wendell Coombs asked for additions or corrections to the minutes of August 10, 2009. Connie Howard made a motion to approve the minutes as written. Joyce McStotts seconded the motion.

Voice vote was taken. Minutes approved 3-0.

Mr. Coombs explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

#### CONFLICT OF INTEREST

Rosi Haidenthaller arrived at the meeting at this time and stated that she is a resident of the neighborhood related to Case #1389, however she does not have any financial interest in the case and maintains that her first priority is the Murray City Board of Adjustment. Ms. Haidenthaller stated that she doesn't believe this is a conflict of interest.

#### CASE #1388 – GRANT MURRAY – 5551 South Sanford Drive – Project #09-74

Brad Batty was the applicant present to represent this request. Chad Wilkinson reviewed the location and request for a side yard setback variance for a storage structure that is constructed in the side yard. The zoning ordinance requires a minimum setback of 8 feet and the total two side yard setbacks of 20 feet; whereas the applicant is requesting a 7 foot 8 inch variance for the storage building to be located within about 4 inches of the property line, for total side yards of 10 feet 4 inches. The property is located within an R-1-8 zone and is surrounded by some commercial and office zoning. There is currently a 10 foot setback on the south property line, and the variance is being requested for the north property line. Municipal Code Ordinance 17.16.050 designates the Board of Adjustment as the appeal authority for Murray City and authorizes the board to grant variances where the request meets the standards of approval. In December of 2008 the Building Department issued a Stop Work Order on the structure and the applicant came into the city office at that time, but there was no formal

application submitted for either a building permit or for a variance. The structure is also located on top of a 5 foot utility easement and the property owner will need to make with application to the Murray City Engineer and approval by the utility companies. Murray City Code Section 17.100.080 states: "Residential building lots in the R-1-8 zone shall meet the following minimum yard requirements. B. Side Yard: The minimum depth of one of the side yards of a residential dwelling is 8 feet. The total side yards shall not be less than 20 feet." There are no special circumstances attached to the property. The property is similar in size with other lots in the neighborhood and area. The lot meets the other general standards of the ordinance related to lot width, area and building height. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal does not meet the standards for a variance, therefore, staff recommends denial of the variance.

Joyce McStotts asked if the variance could be granted if there were no utilities in use on the utility easement. Mr. Wilkinson responded if there is any kind of a power line or water line the easement is typically not granted. There are situations where there is an easement but there may not be any utilities actually located in the easement. The approval for encroachment into an easement is handled through the Engineering Department.

Brad Batty, 5551 South Sanford Drive, stated he has conceded because if he is required to construct an 18 inch foundation underneath the storage shed and there is no way he is going to dig it out. He stated he moved to Murray a year ago from Texas due to his mother having been ill and she has since passed away. He stated that this home is considerably smaller than the one he had in Texas and he has had to utilize the carport by surrounding it with a tarp, and built a similar structure to what is in the neighborhood. Mr. Batty showed photos of similar situations in the neighborhood and asked why he is the only one in violation. He stated that he has attempted to restructure the home and buildings to meet codes and this structure matches the home and does not infringe on the neighbors. He asked how come the city is picking on him and that there are other properties in the neighborhood that are in violation.

Mr. Coombs stated that the setback regulations are adopted for various reasons such as public safety, no encroachment onto neighbors, etc. and that building up to a property line would encroach in the situation of a fire and there needs to be separation and the city is not picking on Mr. Batty. One of the issues is that the building inspector noticed a structure under construction without a permit and issued a Stop Work Order.

Brad Batty stated he will cut off the storage structure and will call it a fence and that he said he will remove the roof. He stated he has materials that he needs to store somewhere and it is not possible to store a refrigerator in an attic. Mr. Batty stated that he is withdrawing this variance application. He stated that the structure is over 120 square feet and therefore he would be required to get a building permit. He stated that there is a big hill in the rear yard with no access and a tree, and therefore he could not put a storage shed in the rear yard. He expressed frustration with his property having to be in compliance where there are other properties in the neighborhood that are not. Mr. Coombs responded that when additions or new structures are going to be built, the city requires the property to be brought into compliance with the current codes. Mr. Coombs

reiterated that whatever changes Mr. Batty makes to the structures they must meet the zoning and building codes.

Mr. Tingey stated that if Mr. Batty has officially withdrawn his application, no public comment is necessary and no further discussion is required.

Brad Batty stated he is withdrawing his variance application and he will deal with the structures and will work it out another way. Rosi Haidenthaller stated that whatever Mr. Batty decides to do with his property, that it meets the city regulations. Mr. Batty stated that he spoke with Mr. Newman, Murray Plans Examiner, who indicated to him that the shed must be at least three feet from the home.

This case was closed.

CASE #1389 – LIFE CENTER MEDICAL – 942 East 5600 South, Project #09-77

Brett Ehlers was present to represent this request. Chad Wilkinson reviewed the location and request for a variance to required zone buffering fence regulations along the east, south and a portion of the west property line for the property located at 942 East 5600 South. The property is located within the C-D-C (commercial) zone. The variance is being requested in conjunction with an application for a conditional use permit to establish a physician's office. The zoning ordinance requires that properties be brought into compliance with code standards at the time of conditional use permit approval. The subject property was originally constructed in Salt Lake County and was subsequently annexed into Murray City. The change of use from the existing engineer's office to a physician's office requires approval of a conditional use permit. The site is currently bordered by residential zoning on the east, south and a portion of the west property line (approximately 70 feet). Residential uses exist on the west and east. To the south there is an existing City owned property which currently houses a well house and pump. The parking for the site is currently located in the northwest portion of the site and is approximately 60 feet from the residential property to the east. The entire portion of the lot between the parking and the property to the east is landscaped with mature, well-maintained landscaping. The parking appears to meet the requirement of the Code with a few minor changes to the disabled person parking space shown. Murray City Code section 17.160.110 requires that a 6-foot high solid masonry wall be constructed where a commercially zoned site abuts a residentially zoned property. The requirement to install the required concrete wall is not peculiar to this property in that all commercial properties share this same requirement when abutting residential zoning, therefore staff is recommending denial of the variance.

Mr. Coombs clarified that a solid masonry wall includes different material types, such as cinder block or post and panel. These might be options that would prevent destroying the existing landscape. Chad Wilkinson explained that the east, south, and a small portion of the west side of the property would require fencing, and that most likely some vegetation will have to be removed in order to install the fence.

Brett Ehlers, 1804 East Lincoln Lane, Holladay, stated that one of the reasons this location is appealing is due to the nice landscaping. Mr. Ehlers stated that he has consulted with contractors about installing a fence and has been advised that all

landscaping, which is 20 years mature, will have to be torn out. Another issue that Mr. Ehlers is concerned about is in regards to vandalism of existing concrete block fences throughout the area and the potential of increased criminal activity in the adjacent neighborhood. Mr. Ehlers stated that he wants his clientele to feel safe when they come to his building.

Kim Anderson, 1144 Chevy Chase Drive, stated that he doesn't live too far away from this location. Mr. Anderson stated that the drafting company that occupied the building had promised that there wouldn't be significant traffic through the area related to their business when the property was rezoned. Mr. Anderson stated that a doctor's office will result in more traffic due to the number of employees and patients, and that the traffic issues have been a source of contention since the time that this property was rezoned. Mr. Anderson stated that he was opposed to the rezoning and, in his opinion, that the commercial areas seem to be encroaching onto the residential area. Mr. Anderson stated that his primary concern is the increase in traffic.

Barr Neff, 556 West Greenleaf, stated that with the current economy he wonders why the wall is so important and questions the necessity of it. Mr. Coombs stated that it has been established by Murray City that there needs to be a buffer between residential and commercial property. The wall acts as a noise buffer and provides safety and protection to the residential areas. Mr. Neff asked why the wall wasn't put in back when the building was constructed. Mr. Coombs responded that originally this property was residential and then changed to commercial use while it was still part of Salt Lake County. If the property had been in Murray at that time, this requirement would have been enforced.

Brett Ehlers stated that this is a wellness clinic and has non-insurance based clients. As for traffic concerns, it will not be a typical doctor's office with a high patient volume. Mr. Ehlers stated that he doesn't understand why the existing vinyl fence around the pump house to the south of the property wasn't a masonry wall to begin with. Mr. Ehlers would like the same consideration as the City received when they installed the vinyl fence.

Chad Wilkinson stated that the standard in the code is based on the property zoning, not the use. Mr. Wilkinson stated that the property to the south is a residentially zoned property, therefore the fencing requirements are different. Mr. Wilkinson stated that it is possible that the need for a buffer along the south side of the property may not be needed. Ms. McStotts asked who put up the vinyl fence. Mr. Wilkinson responded that the City installed the fence when they put in the pump. Mr. Wilkinson stated that he has received a comment from the property owner to the east and indicated their concern about the existing fence and the effect it would have on their property if the fence has to be torn down. Mr. Ehlers stated that the existing chain link fence has been maintained by the resident and vinyl slats have been added as a buffer.

Mr. Coombs stated that it appears the City is willing to not require a masonry wall along the south property line. Mr. Coombs stated that although mature vegetation is nice, it is something that can be replaced, and the properties directly to the west have installed masonry walls. Ms. Howard stated that the Board has stayed consistent with requiring this buffer. Mr. Coombs stated that one option to prevent tagging on the fence is to consider placing vegetation up against it, and also stated that the fence will not be along

5600 South where it would be more visible. Mr. Coombs stated that tagging can happen to almost any kind of fence.

Mr. Coombs suggested that a variance might be considered for the south property line only. Ms. McStotts asked if the variance request can be altered. Tim Tingey responded that the variance request applies to the entire site, but that a portion of the request may be reduced with the balance of the request being approved or denied. Mr. Tingey stated that staff is recommending denial of the entire request for reasons stated.

Ms. Haidenthaller made a motion to modify the variance, and grant the variance for the fence along the south property line that abuts the city's pump house, but deny the variance for the fence along the east and west side that abuts the residential areas. The property line discrepancy along the east side needs to be resolved. The reasoning for granting the variance along the south property line is because it is adjacent to the well house that will, in all likelihood, remain for 50 years or longer; and there is not a residence that lies directly to the south and the existing fence provides a sufficient buffer. Seconded by Ms. Howard.

Call vote recorded by Chad Wilkinson

<u>N</u>	Ms. McStotts
<u>A</u>	Mr. Coombs
<u>A</u>	Ms. Haidenthaller
<u>A</u>	Ms. Howard

Motion passed 3-1.

Ms. McStotts made a motion to approve the Findings of Fact as modified in the motion for Case #1389, Life Center Medical. Seconded by Ms. Haidenthaller.

Call vote recorded by Chad Wilkinson

<u>A</u>	Ms. McStotts
<u>A</u>	Mr. Coombs
<u>A</u>	Ms. Haidenthaller
<u>A</u>	Ms. Howard

Motion passed 4-0.

#### OTHER BUSINESS

There was no other business.

Meeting adjourned.

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Tim Tingey  
Director of Community & Economic Development